



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

April 30, 2013 Government Records Council Meeting

Henry Little
Complainant

Complaint No. 2012-70

v.

New Jersey Department of Corrections
Custodian of Record

At the April 30, 2013 public meeting, the Government Records Council (“Council”) considered the April 23, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the amended findings and recommendations. The Council, therefore, finds that:

1. The original Custodian lawfully denied access to the requested records because the Complainant’s July 27, 2006 OPRA request clearly seeks medical and psychological records which are specifically exempt from public access pursuant to Executive Order No. 26 (McGreevey 2002).
2. The Complainant’s October 25, 2011 request is not a valid OPRA request because the Complainant’s October 25, 2011 records request was not submitted using any form referencing or invoking OPRA, let alone on an official one, and because the Inmate Request Form MR-022 does not reference OPRA anywhere. As such, no unlawful denial of access exists because the Complainant did not invoke OPRA.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 30th Day of April, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council



I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: May 3, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 30, 2013 Council Meeting**

**Henry Little¹
Complainant**

GRC Complaint No. 2012-70

v.

**New Jersey Department of Corrections²
Custodian of Records**

Records Relevant to Complaint:

July 27, 2006 Request: Copies of:

1. 1975 medical records and/or evaluation report from Menlo Park Diagnostic Center.
2. Medical records and psychological records from the New Jersey State Prison from August 30, 1982 to February 2004.

October 25, 2011 Request: All past and present psychological evaluations, reports, analysis, and conclusions of inmate Little's psychiatric disorders.

Request Made: July 27, 2006 and October 25, 2011

Response Made: August 3, 2006

GRC Complaint Filed: March 13, 2012

Background³

Request and Response:

On July 27, 2006, the Complainant submitted an Open Public Records Act ("OPRA") request seeking the above listed records. On August 3, 2006, the second (2nd) business day following receipt of the request, the original Custodian responded in writing. Access to the requested records was denied on the basis that medical and psychological records are exempt from disclosure under OPRA pursuant to Executive Order No. 26 (McGreevey 2002). The Custodian also informed the Complainant that he could obtain the records by submitting Inmate Request Form MR-022 to medical staff at the prison. On October 25, 2011, the Complainant submitted Inmate Request Form MR-022 seeking the records listed above. This form indicates that the requested records are sought pursuant to N.J.S.A. 10A:22-2.6.

¹ No legal representation listed on record.

² John Falvey, Custodian of Records. However, the Custodian at the time of the Complainant's July 27, 2006 OPRA request was Michelle Hammel. No legal representation listed on record.

³ The parties may have submitted additional correspondence, or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On March 13, 2012, the Complainant filed this Denial of Access Complaint challenging the denial of his OPRA request dated July 27, 2006. The Complainant also challenges a denial to his October 25, 2011 request for records on the Inmate Request Form MR-022.

Statement of Information:

On April 30, 2012, the current Custodian submitted his Statement of Information (“SOI”) in response to the Complainant’s Denial of Access Complaint. The current Custodian certifies that the Department of Corrections received the Complainant’s July 27, 2006 OPRA request on August 1, 2006. The Custodian certifies that the Custodian at the time, Ms. Michelle Hammel, responded to the OPRA request on August 3, 2006, denying access to the requested records on the basis that said records are exempt from public access under OPRA pursuant to Executive Order No. 26 (McGreevey 2002). However, the current Custodian certifies that the original Custodian also informed the Complainant that he could obtain the records by submitting Inmate Request Form MR-022 to medical staff at the prison. Further, the current Custodian certifies that the Department of Corrections has no record of receiving the Complainant’s records request dated October 25, 2011. The current Custodian also contends that said request is not a valid OPRA request pursuant to N.J.S.A. 47:1A-5(g) or Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009) because said request does not reference OPRA, but rather references another statutory citation - N.J.S.A. 10A:22-2.6.

Analysis⁴

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

Here, the original Custodian denied access to the records sought in the Complainant’s July 27, 2006 OPRA request on the basis that medical and psychological records are exempt from public access under OPRA pursuant to Executive Order No. 26 (McGreevey 2002). Executive Order No. 26 specifically exempts from public access “[i]nformation relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.”

Therefore, the original Custodian lawfully denied access to the requested records, because the Complainant’s July 27, 2006 OPRA request clearly seeks medical and psychological records which are specifically exempt from public access pursuant to Executive Order No. 26 (McGreevey 2002).

⁴ There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

Valid OPRA Request

The Complainant also challenges a denial of access to his October 25, 2011 request for records on the Inmate Request Form MR-022. The current Custodian certifies that the Department of Corrections has no record of receiving the Complainant's records request dated October 25, 2011. The current Custodian also contends that said request is not a valid OPRA request pursuant to N.J.S.A. 47:1A-5(g) or Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009) because said request does not reference OPRA, but rather references another statutory citation - N.J.S.A. 10A:22-2.6.

In Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies' OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records, not presented on the official form, contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form. *Id.* In effect, this permits requesters to write their own correspondence that requests records from a custodian, as long as the request properly invokes OPRA.

Here, the Complainant's October 25, 2011 records request clearly was not submitted using any official OPRA request form. Additionally, the evidence of record provides that the Inmate Request Form MR-022 does not reference OPRA anywhere and appears to be a separate request process pursuant to N.J.S.A. 10A:22-2.6.

Therefore, the Complainant's October 25, 2011 request is not a valid OPRA request because the Complainant's October 25, 2011 records request was not submitted using any form referencing or invoking OPRA, let alone on an official one, and because the Inmate Request Form MR-022 does not reference OPRA anywhere. As such, no unlawful denial of access exists because the Complainant did not invoke OPRA.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The original Custodian lawfully denied access to the requested records because the Complainant's July 27, 2006 OPRA request clearly seeks medical and psychological records which are specifically exempt from public access pursuant to Executive Order No. 26 (McGreevey 2002).
2. The Complainant's October 25, 2011 request is not a valid OPRA request because the Complainant's October 25, 2011 records request was not submitted using any form referencing or invoking OPRA, let alone on an official one, and because the Inmate Request Form MR-022 does not reference OPRA anywhere. As such, no unlawful denial of access exists because the Complainant did not invoke OPRA.

Prepared By: Dara L. Barry
Communications Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

April 23, 2013